

FILED: 7/29/11

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PHARMACEUTICAL GRADE
HEALTH PRODUCTS, LLC,

Plaintiff,

v.

PEGASUS CONSULTING, INC. d/b/a
WEIGHT LOSS INSTITUTION; JOHN
MUCKENHIRN; PINK FASHIONS
INC.; SHOSHANA IRIS COOPER a/k/a
IRIS COOPER,

Defendants.

Case No. CV11-3871 GHK (JCGx)

**[PROPOSED] FINAL
JUDGMENT BY CONSENT FOR
INJUNCTION AND DAMAGES
AGAINST DEFENDANTS
PEGASUS CONSULTING, INC.
D/B/A WEIGHT
LOSSINSTITUTION, JOHN
MUCKENHIRN, PINK
FASHIONS INC. AND
SHOSHANA IRIS COOPER
A/K/A IRIS COOPER**

(THE HONORABLE GEORGE H. KING)
(COURTROOM 605)

Complaint Filed: July 20, 2009

Plaintiff Pharmaceutical Grade Health Products, LLC (“PGHP”) and
Defendants Pegasus Consulting, Inc., John Muckenhirn; Pink Fashions Inc. and
Shoshana Iris Cooper Muckenhirn (collectively, “Defendants”) having resolved
this case and jointly stipulated for the entry of this Final Judgment by Consent for
Injunction and Damages (“Final Judgment”), and there being good cause therefor,

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

2 1. Defendants were duly served with PGHP's Complaint for trademark
3 infringement and unfair competition.

4 2. The Court has personal jurisdiction over Defendants because the
5 claims alleged in the Complaint arise from business conducted by Defendants in
6 the State of California. Venue is proper in this Judicial District pursuant to 28
7 U.S.C. § 1391(b) because Defendants reside in this Judicial District.

8 3. The Court has jurisdiction over the subject matter of PGHP's claims
9 in this action under the United States Trademark Act pursuant to 15 U.S.C.
10 §§ 1116, 1121(a) and 28 U.S.C. §§ 1331, 1332 and 1338 because PGHP's
11 complaint alleges, *inter alia*, trademark infringement and false designation of
12 origin under the Lanham Act, and because Plaintiff and Defendants are of diverse
13 citizenship and the amount in controversy exceeds \$75,000.00.

14 4. Defendants have consented to a finding by the Court that Defendants
15 have committed actions entitling Plaintiff to the injunctive relief set forth in Paragraph
16 5 below, and the Court so finds.

17 5. Accordingly, the Court orders and Defendants consent to the
18 following injunctive relief ordered in subparagraphs (a), (b) and (c) of this
19 Paragraph 5:

20 (a) Defendants and any of their successors or assigns, inclusive of any
21 person or entity over which Defendants exercise control, are permanently enjoined
22 from (i) using the PHENTRAMINE mark in connection with a product name,
23 advertising or product packaging of any weight loss products or services, and/or in
24 keywords on websites under the control of the Defendants; (ii) directly selling
25 products and services under the PHENTRAMINE mark; (iii) using the term
26 PHENTRAMINE in any website domain name; (iv) incorporating
27 PHENTRAMINE into metadata for Defendants' websites; (v) placing any
28 advertisements for any of Defendants' products, services or websites, wherein the

1 advertisements contain the word PHENTRAMINE; and/or (vi) receiving any direct
2 benefit based upon another person's or entity's unauthorized sale or advertisement
3 of a weight loss product or service under the PHENTRAMINE mark, provided
4 that, Defendants are not in violation based on a resale by third parties of
5 Defendants' non-PHENTRAMINE products under the mark PHENTRAMINE,
6 where Defendants have no knowledge that their product would be resold under a
7 PHENTRAMINE mark. Defendants are not in violation of this subparagraph 5(a)
8 if neither they nor any persons or entities over which Defendants exercise control
9 take any direct or affirmative action to have links to websites appear based on an
10 Internet search for PHENTRAMINE. Furthermore, nothing in this subparagraph
11 5(a), gives Plaintiff the right to limit in any way Defendants' right to use any term
12 or word other than PHENTRAMINE;

13 (b) Defendants and any of their successors or assigns, inclusive of any
14 person or entity over which Defendants exercise control, are enjoined for a period
15 of two years from the date this Final Judgment is entered from (i) selling any
16 product or service beginning with the term "PHENTRA" ("PHENTRA Mark")
17 unless Defendants are selling products produced by persons or entities unrelated to
18 Defendants ("Third Parties") and those Third Parties have a registered and active
19 PHENTRA Mark on file with the United States Patent and Trade Mark Office
20 (USPTO) for the product(s) Defendants sell under the PHENTRA Mark; and (ii)
21 owning, operating and/or having a controlling influence in any website which
22 domain name begins with the term PHENTRA;

23 (c) Defendants shall transfer any and all websites over which Defendants
24 exercise ownership or control containing the mark, PHENTRAMINE, or any mark
25 beginning with or encompassing the term, PHENTRA, to Plaintiff. Defendants
26 have represented that as of the date of execution of the Stipulation for Entry of
27 Final Judgment, there are no such websites.

1 6. In the event that Plaintiff believes that Defendants have breached the
2 provisions of Paragraph 5, Plaintiff shall provide notice to Defendants, providing
3 details of the alleged breach. Upon Defendants' receipt of Plaintiff's notice,
4 Defendants shall have thirty (30) days to cure the alleged breach and notify
5 Plaintiff that the alleged breach has been cured. In the event Defendants fail to
6 cure, Plaintiff has the right to file a Motion pursuant to Paragraph 9.

7 7. Defendants are jointly and severally liable to Plaintiff in the amount
8 of \$25,000.00. However, so long as Defendants (i) tender to Plaintiff the amount
9 of \$1,000.00 either prior to or within five (5) days of entry of this Final Judgment
10 and (ii) abide by the terms of the Final Judgment as stated in Paragraph 5 above,
11 Plaintiff shall forbear from taking any action to enforce this Final Judgment.
12 Plaintiff represents that it has received the \$1,000.00 contemplated in this
13 Paragraph 7.

14 8. Subject to the notice and cure provisions of Paragraph 6, above,
15 should Defendants fail to comply with the terms of this Final Judgment, Plaintiff
16 shall be entitled to judgment for the full amount set forth in Paragraph 7, above,
17 (less any payments actually received from Defendants) and may petition the Court
18 to find Defendants in civil and/or criminal contempt for violating the terms of the
19 injunction as specified in Paragraph 5 of this Final Judgment.

20 9. Any notice hereunder shall be made by first-class U.S. mail and certified
21 mail to Defendants with a copy to Defendants' counsel, Thomas R. Williamson,
22 III, Williamson Intellectual Property Law, LLC, 1870 The Exchange, Suite 100,
23 Atlanta, Georgia 30339. Any petition or request for relief for the entry of judgment,
24 to enforce the injunction, and/or for a finding of contempt shall be in the form of a
25 Motion filed in this Court in accordance with Local Rule 7 with notice provided to
26 Defendants' counsel, Thomas R. Williamson, III, Williamson Intellectual Property
27 Law, LLC, 1870 The Exchange, Suite 100, Atlanta, Georgia 30339 via first-class
28 U.S. mail and certified mail as well as to Defendants at their current address,

1 21630 Medina Estates Drive, Woodland Hills, California 91364. However,
2 Plaintiff must provide notice to Defendants at the addresses in this Paragraph 9 and
3 receive confirmation of delivery of said notice, or confirmation that the U. S.
4 Postal Service is unable to deliver said notice, prior to filing any Motion. During a
5 twelve (12) month period after two (2) instances of actual breach, notice and cure,
6 Plaintiff shall not be required to provide further notice prior to filing a Motion as
7 set forth in Paragraph 9 ~~and shall not be required to engage in the meet and confer~~
8 ~~contemplated by Local Rule 7-3.~~ Should Defendants move from their current
9 address, they shall provide the location of their new address in writing to Plaintiff's
10 counsel, A. Bryan Baer, Esq., at the law firm of Foltz Martin, LLC, Five Piedmont
11 Center, 3525 Piedmont Road, NE, Suite 750, Atlanta, Georgia 30305. Should
12 Plaintiff's counsel, A. Bryan Baer move offices and/or firms, he shall provide
13 notice to Defendants and Defendants' counsel via first-class and certified mail
14 along with an updated address to which Defendants shall notify Plaintiff of any
15 relocation from their current address.

16 10. Each party to bear their own attorneys' fees and costs for Civil Action
17 No. 1:09-CV-1961 in the District Court of the Northern District of Georgia.

18 11. Except to the extent relief is granted on PGHP's Complaint through
19 the entry of this Final Judgment, PGHP's Complaint is dismissed with prejudice.

20 12. The Court shall retain jurisdiction over this action for the purposes of
21 construing, modifying, or clarifying this Final Judgment, and punishing violations
22 thereof.

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13. The Clerk of the Court is directed to give notice of entry of this Final Judgment to the parties pursuant to Rule 77(d) of the Federal Rules of Civil Procedure.

ORDER

IT IS SO ORDERED.

Dated: July 29, 2011

Honorable George H. King
United States District Judge